

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MASSACHUSETTS

	)	
In re	)	
	)	
ROBERT N. LUPO,	)	Chapter 11
	)	Case No. 09-21945-WCH
	)	
Debtor.	)	
	)	

**OPPOSITION BY DEBTOR, ROBERT N. LUPO, TO  
MOTION OF ROCKLAND TRUST COMPANY FOR RELIEF  
FROM STAY AND IMMEDIATE APPOINTMENT OF TRUSTEE  
OR, IN THE ALTERNATIVE, FOR TERMINATION OF EXCLUSIVITY  
(Emergency Relief Requested With Respect to  
Property at 45 South Street, Waltham, Massachusetts)**

By order dated August 16, 2010, this Court granted the August 15, 2010 motion of Rockland Trust Company (“Rockland”) for an emergency hearing with respect to the portion of its motion for relief from stay and immediate appointment of trustee or, in the alternative, for termination of exclusivity (the “Motion”) concerning the property located at 45 South Street, Waltham, Massachusetts (the “South Street Property”) and for the immediate appointment of a trustee. Robert N. Lupo, the above-referenced debtor and debtor-in-possession (the “Debtor”) hereby files this opposition to both relief from stay concerning the Property and to appointment of a trustee. In support of this opposition, the Debtor herewith files the Affidavit of Tony Chisari, Licensed Construction Supervisor (“Chisari”) as well as the Affidavit of Robert N. Lupo. In further support of this opposition, the Debtor states as follows:

1. On August 16, 2010, Mark G. DeGiacomo, the duly appointed Examiner herein, filed the Report of Examiner (the “Examiner’s Report”). The Examiner’s Report characterized the Debtor as very forthcoming, candid, and forthright, and having equity in his real estate (over and above mortgages and his homestead) totaling approximately \$3 million (an estimate the Examiner’s Report said could be off by several hundred thousand dollars either way).

2. Notwithstanding the allegations that led this Court to appoint an examiner, the Examiner’s Report concluded, after examination of the interiors and exteriors of a number of the Debtor’s residential buildings chosen by the Examiner, that at present there are few issues concerning habitability in the Debtor’s residential buildings.

3. The Examiner’s Report discusses certain demolition work the Debtor arranged to have done on the South Street Property and the stop work order that was posted on the South Street Property. As explained in his affidavit, Chisari had spoken with a residential inspector at the Waltham Building Department in early June 2010 and had received verbal confirmation that the building department would issue permits for the proposed work. As explained in the Debtor’s affidavit, because such permits had not issued and a stop work order had been posted, the Debtor hired a different contractor and arranged for all permits to issue. On August 13, 2010 the Examiner was provided with a complete copy of the permit application, and on August 17, 2010 the City of Waltham issued a permit (a copy of which is attached to the Debtor’s affidavit) covering the project for the South Street Property.

4. Rockland makes much of the stop work order and the then-existing lack of permits, and the Debtor realizes that notwithstanding the verbal assurances the demolition

should not have occurred until all permits have issued. Nevertheless, all permits have now issued, and the City of Waltham is satisfied with the Debtor's project for the South Street Property and is permitting it to go forward.

5. In light of the foregoing, the situation hardly rises to the hyperbolic accusations of contempt for the law, public welfare, and creditors contained in Rockland's motion and does not justify either relief from the automatic stay or appointment of a trustee.

Respectfully submitted,

ROBERT N. LUPO,

By his attorneys,

/s/ Adam J. Ruttenberg  
Stewart F. Grossman, BBO #213280  
Adam J. Ruttenberg, BBO # 553158  
LOONEY & GROSSMAN LLP  
101 Arch Street  
Boston, Massachusetts 02110  
(617) 951-2800  
aruttenberg@lgllp.com

Dated: August 17, 2010

**CERTIFICATE OF SERVICE**

I, Adam J. Ruttenberg, hereby certify that on August 17, 2010, a true copy of **Opposition by Debtor, Robert N. Lupo, to Motion of Rockland Trust Company for Relief from Stay and Immediate Appointment of Trustee or, in the Alternative, for Termination of Exclusivity (Emergency Relief Requested With Respect to Property at 45 South Street, Waltham, Massachusetts)** was served on the following was served on the following by email:

American Home Mortgage Servicing, Inc.  
1525 S. Beltline Road, Suite 100 N  
Coppell, TX 75019  
notice@bkcyllaw.com

Lisa Jacobs  
PO Box 488  
Weston, MA 02493  
lbatt@earthlink.net  
lisajacobs8@hotmail.com

Kathleen T. Konkoly  
Smith Elliot Smith & Garmey  
199 Main St.  
PO Box 1179  
Saco, ME 04072  
kkonkoly@sesg.com  
wkany@sesg.com

Lexington Alarm Systems  
9 Alfred Circle  
Bedford, MA 01730  
dhughes@lexingtonalarm.com

Litton Loan Servicing, LP  
P.O. Box 829009  
Dallas, TX 75382-9009  
notice@bkcyllaw.com

Thomas D. Godino & Company, Inc.  
225 Riverview Avenue, Suite 101  
Newton, MA 02466  
tgodinosr@godinoco.com

The undersigned understands the following persons received e-mail notice of such filing:

- Harvey Alford attorneys@alfordandbertrand.com
- Paula R.C. Bachtell paula.bachtell@usdoj.gov
- Eric K. Bradford Eric.K.Bradford@USDOJ.gov
- Alexander L. Cataldo alcpc@verizon.net
- Mark G. DeGiacomo mdegiacono@murthalaw.com, kbratko@murthalaw.com; moleary@murthalaw.com; MA42@ecfcbis.com
- Richard C. Demerle rd@masatlaw.com
- John Fitzgerald USTPRegion01.BO.ECF@USDOJ.GOV
- Jason Giguere mabk@harmonlaw.com, mabk@harmonlaw.com
- Peter J. Haley peter.haley@nelsonmullins.com, jean.jandrys@nelsonmullins.com
- Deirdre M. Keady mabk@harmonlaw.com
- John C. La Liberte JCLaLiberte@sherin.com, sworfolk@sherin.com
- Amy Lee Lipman-White alipmanwhite@stantondavis.com, lparry@stantondavis.com; ladams710@hotmail.com
- Richard T. Mulligan mabk@harmonlaw.com
- Nicholas J. Nesgos nnesgos@pbl.com
- Laura Otenti lotenti@pbl.com, jspagnoli@pbl.com
- Julie A. Ranieri bankruptcy@kordeassoc.com
- David J. Reier dreier@pbl.com
- Nicole Starck nicole@starcklaw.com
- Mark S. Tilden TildenM@aol.com, MarkSTilden@gmail.com
- Herbert Weinberg hweinberg@jrhwlaw.com, bmessina@jrhwlaw.com; paper@mab.uscourts.gov
- Anne J. White awhitetrustee@jdemeo.com

/s/ Adam J. Ruttenberg  
Adam J. Ruttenberg